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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF WASHINGTON  
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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 vs.  
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11 DENNIS RAY PENFIELD,

12 Defendant.  
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)  
) Nos. CR-04-165-JLQ  
) CV-07-209-JLQ

) ORDER DENYING MOTION FOR  
) APPOINTMENT OF COUNSEL  
) AND DISMISSING MOTION  
) PURSUANT TO 28 U.S.C. §2255

14 The Defendant was arrested on July 29, 2004, and charged with five counts of  
15 possession of methamphetamine with intent to distribute. By reason of his five prior  
16 felony drug convictions and the quantity of drugs charged, the Defendant was facing a  
17 mandatory sentence of life, without parole. 21 U.S.C. 841(b)(1)(A)(viii).

18 The case was originally assigned to another judge and numerous continuances  
19 were granted. On February 24, 2005, this case was reassigned to the undersigned and  
20 a jury trial commenced on February 28, 2005. Throughout the pre-trial and trial  
21 proceedings, the Defendant was represented by his appointed attorney, Chris Bugbee,  
22 an experienced defense attorney and former Deputy Prosecuting Attorney. The  
23 Defendant continuously complained about the adequacy of Mr. Bugbee's representation,  
24 but those complaints were all rejected as being meritless.

25 Count 4 of the Superseding Indictment (C.R. 20) charged the Defendant with  
26 possession of more than 50 grams of pure methamphetamine with intent to distribute in  
27 violation of 21 U.S.C. 841(a)(1). On August 18, 2005 the Government had filed an

1 Information To Establish Prior Conviction (C.R. 18) which included documentation to  
2 clearly establish that the Defendant had five prior felony drug convictions. With two  
3 prior felony drug convictions and possession with intent to distribute 50 grams or more  
4 of pure methamphetamine, 21 U.S.C. 841(b)(1)(A))viii) mandated that the Defendant be  
5 sentenced to life in prison without the possibility of parole.. After two days of jury trial,  
6 the testimony of the government witnesses and the Defendant himself in which he  
7 admitted his distributions (C.R. 109), made it clear to the court, counsel, and the  
8 Defendant himself, that there was no reasonable possibility that the Defendant would  
9 be acquitted. The court pointed out to the Defendant and counsel the mandated life  
10 sentence which would have to be imposed if the Defendant was convicted. Counsel and  
11 the Defendant discussed other possible resolutions during the evening recess since they  
12 had apparently not focused upon the mandatory life sentence which would have to have  
13 been imposed had the trial proceeded and the Defendant found guilty.

14 On the morning of March 2, 2005, before resumption of the jury trial, counsel and  
15 the Defendant informed the court that they had reached a plea agreement that would  
16 avoid the requirement of a sentence of life without parole. Both the Government  
17 attorney and the defense attorney informed the court that they had not previously focused  
18 upon the mandatory sentence requirement, but that after further discussion by all,  
19 including the Defendant, had agreed to plead guilty to all charges in exchange for the  
20 Government withdrawing the Information of five prior felony drug convictions and filing  
21 a new Information alleging only one such conviction, thus avoiding a mandatory life  
22 sentence, but including a mandatory minimum sentence of not less than 20 years to life.  
23 The Defendant then entered his pleas of guilty to all five counts and the court then  
24 dismissed the trial jury Throughout the plea colloquy (C.R. 81), the college educated  
25 Defendant participated and acknowledged his complete understanding of the risk of a life  
26 sentence and the terms of the plea agreement. The Defendant, on several occasions  
27 expressed satisfaction with the representation provided by Mr. Bugbee. After

1 preparation and receipt of a Presentence Report, the court imposed the twenty year  
2 mandatory minimum sentence.

3 The Defendant unsuccessfully appealed his sentence which appeal was dismissed  
4 (C.R. 116) by reason of the Defendant having waived his right to appeal in the oral plea  
5 agreement. He now has filed this § 2255 action alleging “ineffective assistance of  
6 counsel,” claiming innumerable instances of claimed failures on the part of Mr. Bugbee’s  
7 representation. However, the Defendant has not included the facts of the record that the  
8 Government’s witnesses and that of the Defendant himself had put him in a position of  
9 being subject to a mandatory sentence of life imprisonment. All of the claimed pre-trial  
10 and trial errors on the part of Mr. Bugbee could not change those facts and the almost  
11 inescapable life sentence the Defendant was facing. The efforts of Mr. Bugbee in the  
12 recess plea negotiations saved the Defendant from that life sentence and the Defendant  
13 himself, in the plea colloquy, expressed satisfaction with Mr. Bugbee’s efforts and  
14 representation.

15 28 U.S.C. 2255 and Rule 4(b) of the Rules Governing Section 2255 Proceedings  
16 For The United States District Courts requires the judge who conducted the trial to  
17 examine the motion and “the record of prior proceedings” to determine whether the  
18 moving party is entitled to relief. If the trial judge determines that the record establishes  
19 that “the moving party is not entitled to relief, the judge must dismiss the motion and  
20 direct the clerk to notify the moving party.” As the trial judge and having reviewed the  
21 trial transcripts which are on file herein, it is clear that the Defendant is not entitled to  
22 relief on his claim of ineffective assistance of counsel. The Defendant has not shown,  
23 nor can he, that any action or inaction on the part of Mr. Bugbee resulted in any  
24 prejudice to the Defendant. Rather than his assistance being ineffective, it was the  
25 effective assistance of counsel that saved Mr. Penfield from a mandatory sentence of life  
26 without parole.

27 The Motion For Appointment of Counsel and the Motion Pursuant To 28 U.S.C.

1 § 2255 are DISMISSED.

2 The Clerk of this court shall enter this Order, enter judgment dismissing the 28  
3 U.S.C. 2255 Motion, forward copies to counsel and the Defendant and close this file and  
4 file No. CV-07-209-JLQ.

5 **DATED** this 8th day of August 2007.

6  
7 s/ Justin L. Quackenbush  
8 JUSTIN L. QUACKENBUSH  
9 SENIOR UNITED STATES DISTRICT JUDGE  
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